committed a breach of the tenancy. It is further alleged that she committed a breach of the tenancy by not complying with the requirement of section 14(1)(b) by prominently displaying in or upon the premises a notice in the form set out in the Second Schedule to the Ordinance clearly setting out the rent of the whole premises and the rent of every part so sub-let. In my opinion, the provisions of section 14 of the Ordinance cannot be treated as the implied terms of the contractual tenancy. They are merely the personal obligations of the tenant, the non-compliance of which renders him liable to be prosecuted under section 14(2) of the Ordinance. On this ground therefore the claim for possession must fail.

In the result there will be judgment for the plaintiff for delivery up of vacant possession of the premises on or before 31st March, 1965, mesne profits at the rate of $191 a month from the date of writ until 31st March, 1965, double rent at the rate of $382 a month from 1st April, 1965 to the date of delivery of vacant possession of the premises, and costs.

Judgment for the plaintiff.

Solicitors: *Shook Lin & Bok; P. S. Moorthy.*

MAHNI v. ALI & ANOR.

[A.C.J. (Gill J.) November 27, 1964]

[K.L. — Civil Appeal No. 10 of 1964]

Land Laws — Recovery of possession — Approved application of State land — Assignment of beneficial rights — Whether assignee can bring action for possession.

One Sapiah, whose application for State land had been approved, assigned her beneficial rights to expectation in respect of the land, to the appellant. The first respondent was residing with Sapiah on the land. Sapiah vacated the land but the first respondent refused to do so and allowed the second respondent to go into occupation of the land. The appellant brought an action for recovery of possession. The assignment to him was registered after the action was commenced.

Held: the effect of the contract of assignment was to make the appellant a licensee of the approved applicant and he therefore became entitled to occupation and possession of the land and entitled to recover possession of it from the respondents, who had no right or title to the possession.

Case referred to:—

(1) *Malaya Borneo Building Society Ltd.* v. *Ramachandran* [1959] M.L.J. 182.

CIVIL APPEAL.

Eugene Lye for the appellant.

K. Chelvanayagam for the respondents.

Gill J.: This is an appeal against the dismissal by the magistrate's court, Kuala Lumpur of an action in that court by the appellant as plaintiff against the respondents as defendants for the recovery of possession of a piece of land in Sungei Way New Village whereon is erected a dwelling known as house No. 235, Road 7, Lot No. 131.

The facts of the case in the magistrate's court were not in dispute. The land in question is State land. One Sapiah binti Abdul Hamid made an application for its alienation to her. The Collector of Land Revenue (KL), Sungei Besi by a letter dated 4th July, 1958 informed her that her application for dwelling house site bearing Lot No. 131 at Sungei Way New Village in the Mukim of Petaling, District of Kuala Lumpur had been approved on the terms and conditions set out in that letter. The letter stated that on her paying a sum of $65.50 by way of premium, rent and survey fees, etc., her name would be recorded in the roll of approved applications. Subsequently her name was in fact recorded in Approved Application No. A 38337/59.

On or about 9th August, 1961 the plaintiff purchased from Sapiah the beneficial rights to expectation of title in respect of the piece of land, and an assignment form as required under the Land Rules, 1930 was executed and attested by the Collector of Land Revenue presumably on 29th November, 1961, on which date the requisite fee was paid. This assignment was registered on 29th November, 1963 and the plaintiff's name was recorded in the roll of approved applications, the approved application being numbered as AA29/63.

Prior to the so-called purchase of the land the first defendant, who is the stepfather of Sapiah, was residing with Sapiah on the land. Sapiah vacated the land on or about the 21st November, 1961 in order to yield vacant possession to the plaintiff on completion of the purchase as aforesaid, but the first defendant refused to quit and has remained in occupation ever since. Subsequently he allowed the second defendant to go into occupation and collected $35 a month as rent from the second defendant.

The learned magistrate decided that as the assignment was not registered until 29th November, 1963, and since the action before him was commenced on 5th July, 1963, the plaintiff had no right to sue the defendants. He therefore dismissed the action. Thus, the only question to be decided on this appeal is whether the appellant had a right to sue before her name was recorded in the roll of approved applications.

The legal position on a person's name being recorded as an approved applicant was stated by Smith J. in *Malaya Borneo Building Society Ltd.* v. *M. Ramachandran* [1] at page 186 as follows:—

"It is quite clear from the definition of 'State land' in section 2 of the Land Code of Selangor that land held under an approved application is State land and it is clear by section 18 of the Code that the approved applicant has no right to registration of title. All that the approved applicant has is 'rights by way of expectation of title to the land' as stated by rule 12 of the Land Rules, 1930. These rights are capable of assignment provided that rule 12 is complied with. Rule 12 requires that prior permission be obtained by the approved applicant to assign his rights by way of expectation of title to a third party and that the application for permission shall be made in the form given in Schedule V to the Rules. The Collector has the power to refuse such transfer and there is provision for an appeal to the Ruler."

Thomson C.J., as he then was, said in the same case at page 184:—

"....there can be no question of any property in land occupied under approved application being vested in the occupant and to ascertain what rights the occupant has in relation to such land it is necessary to look to section 18 of the Code and rules 7 to 15 of the Land Rules. Briefly, these rights are that he is entitled to occupy the land, that he has certain contingent rights to registration of title, and that in certain conditions he may subject to the consent of the Collector assign his rights as approved applicant *tanta et talia*. He cannot, however, assign more than he himself has, *non dat qui non habet* and rule 10 of the Rules makes it clear that no dealing in his rights can in any circumstances be capable of registration."

Ong J. at page 188 said:—

"....It is implicit in rule 10 of the Land Rules that freedom of contract is not struck at, but that only no dealings in land comprised in an approved application shall be capable of registration."

With the above statement of the law I respectfully agree.

Sapiah, the original approved applicant, and the appellant in this case were doing no more than entering into a contract for the assignment to the latter of the former's right to expectation of title. Under that contract, which was embodied in the assignment, Sapiah agreed to transfer her right of occupation to the appellant. Until the assignment was registered the appellant, in my opinion, became a licensee of Sapiah and consequently became entitled to occupation and possession of the land. Sapiah herself had divested herself of any right of possession by executing the form of assignment. The first respondent at no time had any right or title to possession and consequently could pass no such rights to the second respondent. In the circumstances as from the date of execution of the assignment by Sapiah the appellant became entitled to possession and therefore was entitled to sue for recovery of possession. The first respondent at some time or other may have been a licensee of Sapiah, but ever since Sapiah executed an assignment of whatever rights she had to the land in favour of the appellant he became and has ever since remained a trespasser on the land. I would therefore allow the appeal, set aside the magistrate's order of dismissal of the action and make an order that the respondents do forthwith deliver up vacant possession of the land to the appellant and that the first respondent do pay damages for trespass and unlawful occupation at the rate of $35 per month from the 21st of November, 1961 to the date on which he gives up vacant possession. The respondents must pay the costs of this appeal and of the action in the lower court.

Appeal allowed.

Solicitors: *Eugene Lye & Co.; K. Chelvanayagam.*

LASOO & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.C.) November 30, 1964]

[Sibu — Criminal Appeal No. CA/14/64]

Dangerous Drugs — Importing raw opium — Sentence — Trafficking in opium — Necessity to apply for disposal of seized property — Dangerous Drugs Ordinance (Cap. 119), ss. 4(1) and 6.

This was an appeal against sentences imposed on the appellants who were convicted on charges of importing raw opium and possession of opium under section 4(1) and (6) of the Dangerous Drugs Ordinance. They were sentenced to two years imprisonment on the 1st charge and 15 months imprisonment on the 2nd charge. No application was made for the disposal of the opium in the lower court.

Held: (1) where a person is found to have possession of opium in such quantity as to show positively and convincingly that he is engaged in trafficking in such drug the proper sentence is a deterrent sentence. A fine can never be a deterrent sentence;

(2) an application for the disposal of the seized property, the opium in this case, should have been made in the lower court as soon as the court had delivered judgment.

Case referred to:—

(1) *Yong Chiau & Ors.* v. *Public Prosecutor* [1958] S.C.R. 1.

MAGISTRATE'S CRIMINAL APPEAL.

Appellants in person.

Inspector Idris for the Public Prosecutor.

Lee Hun Hoe J.C.: Appellants were jointly charged in the District Court, Sibu, with importing raw opium and possession of said opium under section 4(1) and section 6 of the Dangerous Drugs Ordinance. They pleaded guilty to the 2nd charge and claimed trial on the 1st charge. They were tried and found guilty of the 1st charge. Each was sentenced to two years' imprisonment on the 1st charge and fifteen months' imprisonment on the 2nd charge. The sentences were to run concurrently. Against these sentences they appealed.

Before I deal with the appeals there is one matter I think I should mention. As soon as the lower court had delivered judgment the prosecuting officer should make an application for a